

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING ESTABLISHING PROCEDURE
FOR ADOPTION OF STANDARD CONTRACT TERMS AND CONDITIONS**

Decision (D.) 03-06-071 granted the request of the Center for Energy Efficiency and Renewable Technologies (CEERT) and Southern California Edison (SCE) that the parties have an opportunity to negotiate further on the standard contract terms and conditions to be adopted by the Commission for renewable energy resources. The Commission found that the type and level of detail required for fully developing standard terms and conditions fell best within the abilities of the parties to determine, and that the record was not adequate for the Commission to decide the actual language of specific terms and conditions. (Id., p.56.)

Accordingly, after giving the parties time to negotiate on their own, the Commission's Energy Division conducted workshops on September 10 and 17, 2003, to facilitate negotiation and agreement of the parties. However, despite some areas of consensus, the parties could not reach agreement.

Senate Bill (SB) 1078 requires the Commission to adopt:

Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources,

including performance requirements for renewable generators.
(§ 399.14(a)(2)(D)).

Given this statutory requirement, and the inability of the parties to reach a negotiated resolution, this Ruling sets out a process for resolving this issue via litigation. Further negotiation among the parties may yet prove productive at a later stage, but in the meantime it appears that the Commission must provide further guidance.

The process for adopting standard contract terms and conditions will be as follows: First, parties will submit opening and reply briefs on what general terms and conditions should be standard. Based on these briefs, the Commission will issue an interim decision identifying which terms and conditions shall be adopted as standard. Subsequently, at the direction of the assigned ALJ, the parties will submit briefs with specific recommended language for each of those terms and conditions. The parties may then be given another opportunity to resolve their differences. Finally, the Commission will issue a decision adopting specific language for each standard term and condition.

Consistent with SB 1078, “standard” means that the terms and conditions approved by the Commission are to be the same in all contracts under the RPS program, and may not be modified by negotiation. To the extent that parties wish to be able to negotiate certain terms and conditions, they may argue that those terms and conditions should not be standardized, or that the adopted standard terms and conditions should allow for negotiation (e.g., “delivery point shall be _____.”).

The following terms and conditions were discussed at the workshops:

1. Commission approval
2. Definition and ownership of RECs
3. SEP awards, contingencies

4. Confidentiality
5. Contract term
6. Eligibility
7. Performance standards/requirements
8. Product definitions
9. Non-performance or termination penalties and default provisions
10. Milestones
11. Pricing structures, restrictions
12. Credit terms
13. Power delivery
14. Delivery point
15. Contract modifications
16. Assignment
17. Applicable law
18. Dispute resolution
19. Representations and warranties
20. Indemnity
21. Force majeure
22. Scheduling coordination
23. Imbalance issues
24. Prevailing wage, minority and low-Income issues
25. Project modifications
26. Flow down of provisions.

Parties' opening and reply briefs should use this list as a template.¹ For each of these terms and conditions, each party should state whether that term or condition should be made standard, and why or why not, and briefly describe the purpose or intent of that term or condition. In addition, for each term or

¹ Should parties not be familiar with any of these terms and conditions, parties may contact John Galloway, of the Commission's Energy Division at jhg@cpuc.ca.gov for more information, or may contact other parties that participated in the workshops. Parties may propose additional terms and conditions. Any such additional proposals should appear in the briefs after the above listed terms and conditions.

condition, each party should describe the policy implications of each term or condition and its adoption or omission, and the relationship or interaction of each term or condition to other terms and conditions. Parties need not propose specific language for standard contract terms and conditions at this stage. If a party has no position on a particular term or condition, it should still list each of the above terms and conditions, and expressly state that it has no position. To the extent that parties can agree, joint briefs are encouraged.

Opening briefs are due on November 12, 2003. Reply briefs are due on December 3, 2003. Consistent with prior practice in this proceeding, electronic service of briefs is mandatory. Electronic service should be made by 4 p.m. on the specified dates. Hard copy service shall only be made to parties requesting hard copies. Briefs should be served separately, via individual e-mail, to Administrative Law Judge Peter V. Allen at pva@cpuc.ca.gov. It is the sender's responsibility to ensure proper electronic service.

IT IS RULED:

1. Opening Briefs on standard terms and conditions are due November 12, 2003, as described above.
2. Reply Briefs on standard terms and conditions are due December 3, 2003, as described above.
3. Opening and Reply Briefs shall have a standardized format, as described above.
4. Service of briefs shall be electronic, as described above.

Dated October 22, 2003, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Establishing Procedure for Adoption of Standard Contract Terms and Conditions on all parties of record in this proceeding or their attorneys of record.

Dated October 22, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN
Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.